

## FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

The Invitation to Partner (ITP) is the compilation of requirements for the Electronic Benefit Transfer (EBT) system in California. The requirements of the ITP are the practical application of the direction received from state and federal law, state policy, industry standards and multiple stakeholder input. It is the culmination of extensive research and years of work that has involved the participation and input from multiple state agencies and departments, counties, retailers, client advocates and other stakeholders. The ITP reflects almost all of the EBT policy decisions developed by the California Department of Social Services (CDSS), and has been reviewed and approved by the EBT Committee as required by the Welfare and Institution Code Sections 10068 and 10069. Further, the ITP is an integral part of the contract between the state and contractor; thus the contractor is contractually obligated to meet ITP requirements.

The document commonly referred to as the "contract" is actually comprised of numerous separate documents. The document entitled "Electronic Benefit Transfer Contract" is the negotiated terms and conditions (NTC). This document contains the terms for the legal relationships between the parties and defines how the other documents comprising the contract interplay with the NTC. While the NTC defines the legal relationship, the ITP contains the contractor's responsibilities related to and the requirements for the EBT system. Together, these two documents, along with the contractor's proposal (which is not used as a basis for these regulations) and accepted deliverables, comprise the EBT contract; therefore, each of these documents is part of the overall contract and is therefore legally binding and enforceable.

Public Law 106-171 requires State agencies to provide nationwide interoperable functionality in their EBT systems and portability for electronically issued food stamp benefits. 7 CFR 274.12(i)(10) requires states to adopt uniform standards to facilitate interoperability and portability nationwide. Federal Register, Vol. 65, No. 158, August 15, 2000, specifies that the Quest Operating Rules are the uniform standards that have been adopted by the majority of states. The Quest Rules provide the requirements to distribute government benefits under the Quest service mark for State agencies that choose to adopt these rules. The Food and Nutrition Service (FNS) has adopted language from the Quest rules to standardize the roles and responsibilities of the State agencies or their EBT Contractor and other entities involved in the EBT system. California adopted the Quest Rules for its statewide EBT system and the EBT Contractor, and any subcontractors must comply with the Quest Operating Rules as set forth in the California EBT ITP Section 6.16.2. The Quest rules, Chapter 5, establishes the procedures for various parties involved in error resolution that include benefit adjustments for EBT system errors.

## Section 16-705

### Specific Purpose/Factual Basis:

This section is being adopted to provide a location within the EBT regulations for benefit adjustment for EBT system errors. This adoption is necessary to implement a statewide EBT system as required by 7 CFR 274.12(a) and (g)(4)(ii), and Welfare and Institutions Code Sections 10065, 10069, 10072(i) and 10077.

### Handbook Section 16-705.1

#### Specific Purpose:

This handbook section is being added to define a benefit adjustment for an EBT system error.

#### Factual Basis:

This handbook section is necessary to conform to the description of the process of benefit adjustment resulting from a system error in 7 CFR 274.12(g)(4)(ii).

### Handbook Section 16-705.11

#### Specific Purpose:

This handbook section is being added to provide a definition of the term "system error."

#### Factual Basis:

This handbook section is necessary to conform to the definition of a system error as provided in the Quest Operating Rules, Definitions Chapter, page 7, and 7 CFR 274.12(g)(4)(ii).

### Handbook Section 16-705.12

#### Specific Purpose:

This handbook section is being added to identify the types of benefit accounts a system error can effect.

#### Factual Basis:

Cash and food stamp benefits are issued by the State EBT system, therefore, both types of benefits are subject to EBT system errors. This handbook section is necessary to conform to the definition of a system error as provided in 7 CFR 274.12(g)(4)(ii) and the Quest Operating Rules, Definitions Chapter, page 7. Additionally, Quest Operating Rules Chapter 5, beginning at page 28, provides the adjustment process for both cash and food

stamp benefits. Although the Quest Operating Rules, Chapter 5, is titled Error Resolution, the footnote on page 28 clearly ties this chapter to the Food and Nutrition Service rules for benefit adjustment due to system errors in 7 CFR 274.12(g)(4)(ii).

#### Handbook Section 16-705.2

##### Specific Purpose:

This handbook section is being added to identify that the EBT Contractor is responsible to correct (adjust) out-of-balance conditions which occur during the redemption or settlement process as a result of system error.

##### Factual Basis:

This handbook section is necessary to comply with the Quest Operating Rules, Chapter 5, and 7 CFR 274.12(g)(4)(ii). As with other sections of the EBT regulations, this handbook section describes certain activities the EBT Contractor will perform in the benefit adjustment process. This understanding is clarified in the Preamble to the interim benefit adjustment rules, contained in the Federal Register, Vol. 64, No 174, September 9, 1999, page 48934, right column, which states that, "As with other operational components of EBT, any of the requirements of this rule can be handled by the processors, [California uses the term EBT Contractor] as agents of the State agencies, if appropriate."

#### Handbook Section 16-705.21

##### Specific Purpose:

This handbook section is being added to explain that an adjustment amount will be equal to the amount of the original error transaction and may result in either a credit or a debit to a recipient's account.

##### Factual Basis:

This handbook section is necessary to conform to the Quest Operating Rules, Chapter 5. The Preamble to the Final Benefit Adjustment Rules, contained in Federal Register, Volume 65, No. 129, July 5, 2000, page 41323, left column, second complete paragraph, adds that some acquirers' systems cannot accept partial adjustment amounts, therefore, in California, only the full (original) error transaction amount will be adjusted.

#### Sections 16-705.3 and .31, and Handbook Sections 16-705.311 and .312

##### Specific Purpose:

Sections 16-705.3 and .31 are being adopted to establish that recipient-initiated food stamp adjustments must be requested within 90 calendar days of the original error transaction. Handbook Sections 16-705.311 and .312 further clarifies that the EBT Contractor will

investigate the request, render a decision and, if warranted, move funds into the recipient's account within 15 calendar days from the date of the request.

Factual Basis:

Sections 16-705.3 and .31 are necessary to conform to 7 CFR 274.12(g)(4)(ii)(A). The Preamble to the Final Benefit Adjustment Rules, contained in Federal Register, Vol. 65, No. 129, July 5, 2000, page 41325, left column, second complete paragraph, also clarifies that the recipient has 90 days from the date an alleged error occurred to request an adjustment. According to 7 CFR 274.12(g)(4)(ii)(A), the State has 10 business days from the date of the recipient request to resolve a recipient-initiated adjustment. However, Handbook Sections 16-701.311 and .312 use a 15-calendar-day time frame in order to be consistent with Section 16-705.51, Retailer- or Commercial Institution-Initiated Benefit Adjustment, which uses a 15-calendar-day time frame in the waiver approved by the Food and Nutrition Service (California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(b)]).

Section 16-705.32

Specific Purpose:

This section is being adopted to provide recipient rights where an adverse action is taken on the recipient's account in the form of a denied food stamp adjustment request.

Factual Basis:

This section is necessary to conform to the notice of action requirements established in the Preamble of Federal Register Volume 65, No. 129, July 5, 2000, page 41324, first column, first full paragraph. This section is also necessary to comply with 7 CFR 274.12(g)(4)(ii)(A).

Final Modification:

This section is being amended to correct an obsolete term.

Sections 16-705.4 and .41, and Handbook Sections 16-705.411 and .412

Specific Purpose:

Sections 16-705.4 and .41 are being adopted to establish that recipient-initiated cash benefit adjustments must be requested within 90 calendar days of the date of the original transaction. The handbook sections further specify that the EBT Contractor will respond to the request in accordance with the time lines established in the Quest Operating Rules, Chapter 5.

Factual Basis:

These sections and handbook sections are based on the requirements established in Quest Operating Rules, Chapter 5.

Final Modification:

Handbook Section 16-705.412 is being amended to correct a typographical error.

Section 16-705.42

Specific Purpose:

This section is being adopted to establish that if a recipient-initiated cash benefit adjustment is denied, a notice of action must be sent to the recipient informing them of the denial and the right to file for a State hearing within 90 calendar days from the date of the notice and that no aid paid pending is provided. This process maintains consistency between food stamp and cash adjustments.

Factual Basis:

A notice of action shall be sent in recipient-initiated cash benefit adjustments for consistency between cash and food stamp recipient-initiated benefit adjustment procedures. The content of the notice is the same as described in Section 16-705.33. Consistency in procedures and noticing is less confusing for the recipient and assists in CWD administrative/operational efficiency. Based on the above, CDSS has adopted a policy such that where possible food stamp and cash adjustments shall be treated the same.

Final Modification:

This section is being amended to correct an obsolete term.

Handbook Sections 16-705.5 and .51

Specific Purpose:

These handbook sections are being added to explain that retailer- or commercial institution-initiated food stamp or cash benefit adjustment requests will be addressed by the EBT Contractor no later than 15 calendar days from the date of the original error transaction.

Factual Basis:

These handbook sections are necessary to conform to California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)] that the State will act upon retailer- or commercial institution-initiated adjustments no later than fifteen (15) calendar days and Quest Operating Rules, Chapter 5.

Section 16-705.6

Specific Purpose:

This section is being adopted to establish that, in the event that a retailer or commercial institution has requested a debit adjustment, the recipient must be notified in a timely manner of the adjustment request.

Factual Basis:

This section is necessary to comply with 7 CFR 274.12(g)(4)(ii)(B) and California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)] that a notice will be sent to the recipient upon receipt of notification of a retailer-initiated debit adjustment. The Preamble to the Final Benefit Adjustment Rules, contained in the Federal Register, Vol. 65, No. 129, July 5, 2000, page 41322, middle column, second complete paragraph, defines food stamp benefit debit adjustments as a type of adverse action; therefore, notice and appeal rights apply. This same reasoning also applies in retailer-initiated debit adjustment for a cash benefit case. Consistency in procedures and noticing is less confusing for the recipient and assists in CWD administrative/operational efficiency.

Section 16-705.61 et seq.

Specific Purpose:

This section is being adopted to establish that the notice of action referenced in Section 16-705.6 must specify the following: a retailer or commercial institution has requested a debit adjustment from the recipient's account; the full amount and type (debit) of the adjustment, including the date, time, and location of the erroneous transaction; that the adjustment amount may be debited from the current balance or from the next future month's benefit; where the recipient may call to dispute the adjustment and request a State hearing; and that the recipient has the right to postpone the debit adjustment pending the outcome of a State hearing provided that the hearing is requested within 15 calendar days from the date of the notice.

Factual Basis:

This section is necessary to comply with the requirements in 7 CFR 274.12(g)(4)(ii)(B) and California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)]. The Preamble to the Final Benefit Adjustment Rules, contained in the Federal Register, Vol. 65, No. 129, July 5, 2000, page 41323, right column, top partial paragraph, last sentence, provides items that states are encouraged to include in the notice.

Final Modification:

Sections 16-705.614 and .615 are being amended to correct an obsolete term.

Section 16-705.62

Specific Purpose:

This section is being adopted to establish that a recipient has 90 calendar days from the date of the notice to request a State hearing.

Factual Basis:

This section is necessary to comply with 7 CFR 274.12(g)(4)(ii)(B)(1). Consistency in procedures and noticing is less confusing for the recipient and assists in CWD administrative/operational efficiency. This regulation is also based on policy adopted by CDSS that where possible food stamp and cash adjustments shall be treated the same.

Final Modification:

This section is being amended to correct an obsolete term.

Handbook Section 16-705.63

Specific Purpose:

This handbook section is being added to explain that if a recipient disputes a retailer or commercial institution-initiated adjustment and requests a State hearing within 15 calendar days from the date of the notice, no further action shall be taken to adjust the account until such time that the State hearing decision is rendered.

Factual Basis:

This handbook section is describes to the requirements in the California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)]. Consistency in procedures and noticing is less confusing for the recipient and assists in CWD administrative/operational efficiency. This regulation is also based on policy adopted by CDSS that where possible food stamp and cash adjustments shall be treated the same.

Final Modification:

This handbook section is being amended to correct an obsolete term.

#### Handbook Section 16-705.631

##### Specific Purpose:

This handbook section is being added to explain that if the State hearing referenced in Handbook Section 16-705.63 is decided in the recipient's favor, no notice is required.

##### Factual Basis:

This handbook section describes the requirements of Quest Operating Rules, Chapter 5, 7 CFR 273.15(k)(1), and California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)].

##### Final Modification:

This handbook section is being amended to correct an obsolete term.

#### Handbook Section 16-705.632

##### Specific Purpose:

This handbook section is being added to explain the process if the State hearing referenced in Handbook Section 16-705.63 is decided in favor of the initiating retailer or commercial institution.

##### Factual Basis:

This handbook section is describes the requirements of Quest Operating Rules, Chapter 5, 7 CFR 273.15(k)(1), and California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)].

##### Final Modification:

This handbook section is being amended to correct an obsolete term.

#### Handbook Section 16-705.64

##### Specific Purpose:

This handbook section is being added to explain that if a recipient does not request a State hearing within 15 calendar days of the notice of action referenced in Section 16-705.6, the EBT Contractor shall debit the recipient's account for the total amount of the adjustment.



Factual Basis:

This handbook section describes the requirements in Quest Operating Rules, Chapter 5, 7 CFR 274.12(g)(4)(ii)(B)(2), and the conditions of California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)].

Final Modification:

This handbook section is being amended to correct an obsolete term.

Handbook Section 16-705.65

Specific Purpose:

This handbook section is being added to explain that if a recipient requests a State hearing after the 15<sup>th</sup> calendar day but within 90 calendar days from the date of the notice of action referenced in Section 16-705.6, the State hearing request will be granted but the adjustment process will continue.

Factual Basis:

This handbook section describes the requirements in Quest Operating Rules, Chapter 5, and 7 CFR 274.12(g)(4)(ii)(B)(2) that the recipient has 90 days from the date of the notice to request a State hearing. Also, California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)] describes that if the recipient does not request a State hearing within 15 calendar days, the adjustment will be processed to debit the recipient's account and the request for hearing will be granted.

Final Modification:

This handbook section is being amended to correct an obsolete term.

Handbook Sections 16-701.66 and .67

Specific Purpose:

These handbook sections are being added to describe the notice requirements for a subsequent transaction. The handbook sections further explain that the county does not have to send a notice of action when the recipient's account is credited.

Factual Basis:

These handbook sections describe the requirements in Quest Operating Rules, Chapter 5, and the Preamble of the Federal Register, Vol. 65, No. 129, July, 5, 2000, page 41323, right column, first full paragraph which state that additional noticing is not required to move funds or complete the adjustment or when the adjustment is a credit to the account.

Final Modification:

Handbook Section 16-705.66 is being amended to make a grammatical correction.

Handbook Section 16-705.7

Specific Purpose:

This handbook section is being added to explain the process by which the EBT Contractor will attempt to debit funds from a recipient's account when an adjustment is requested.

Factual Basis:

This handbook section is based on the requirements of the Quest Operating Rules, Chapter 5, and 7 CFR 274.12(g)(4)(ii)(B) when there are insufficient benefits to cover the entire adjustment amount, the State/EBT Contractor is required to attempt to complete the adjustment by debiting from the next future month's benefits. This section is also based on the California Approved Waiver Request #2010167 for 7 CFR 274.12(f)(4)(ii)(B) [subsequently renumbered to 7 CFR 274.12(g)(4)(ii)(B)]. As a condition of this waiver California will not settle partial adjustments meaning that no partial debit adjustments will occur unless the recipient's benefit account has sufficient balance to complete the total amount of the adjustment by the end of the next calendar month. Therefore, the adjustment will be cancelled if the adjustment cannot be completed in total by the next calendar month. This handbook section is based on the requirements in the Preamble of the Final Benefit Adjustment Rules, Federal Register, Vol. 65, No. 129, July, 5, 2000, page 41324, middle column, second full paragraph, which provides that an adjustment will be discontinued or cancelled when the recipient leaves the benefit program, i.e., not longer receiving program benefits, before the adjustment has been completed.

Handbook Section 16-705.71

Specific Purpose:

This handbook section is being added to clarify that a food stamp adjustment can only come from a food stamp account and a cash adjustment can only be made from a cash account.

Factual Basis:

This handbook section is based on the requirements of the Quest Operating Rules, Chapter 5, which references cash and food stamp account in these procedures. In general, the EBT system has two account types, food stamps and cash. The cardholder selects which benefit account to access in performing a transaction. The benefit type is identified when there is an EBT system error and the adjustment must occur from/to the appropriate benefit account.

Section 16-705.8

Specific Purpose:

This section is being adopted to explain that if a certified food stamp retailer refuses to fund a legitimate adjustment or is out of business, the State is ultimately responsible for the crediting of a recipient account.

Factual Basis:

This section is necessary to reflect to the requirements established in the Preamble of Federal Register Vol.65, No. 129, page 41324, center column, second full paragraph which states that when a retailer is no longer participating in the Food Stamp Program, the State is responsible for funding a credit adjustment to make the recipient whole in this circumstance.

b) Identification of Documents Upon Which Department Is Relying

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996

Public Law 106-171

7 USC 2016

7 CFR 273.15

7 CFR 274.12

California Approved Waiver Request #2010167 and FNS approval letter dated August 2, 2001.

California Approved Waiver Request #2010191 and FNS approval letter dated October 12, 2001.

Federal Register, Vol. 64, No. 174, September 9, 1999, Interim Rule.

Federal Register, Vol. 65, No. 129, July 5, 2000, Final Rule.

Federal Register, Vol. 65, No. 158, August 15, 2000, Interim Rule.

Assembly Bill 1542, Chapter 270, Statutes of 1997

Senate Bill 1247, Chapter 371, Statutes of 1999

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c) Local Mandate Statement

These regulations implement issuance of Food Stamp and cash benefits via the EBT system. The regulations implementing issuance of cash benefits via the EBT system do not impose a mandate on local agencies or school districts because this is a county option as set forth in Welfare and Institutions Code Section 10069. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

The regulations implementing issuance of Food Stamp benefits via the EBT system do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because any costs associated with the

implementation of these regulations are costs mandated by Federal Food Stamp regulations at 7 CFR 274.12.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would lessen any adverse impact on small business.

e) Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #2 at the public hearing held on September 25, 2002 in Sacramento, California. No written or oral testimony was received during the 45-day comment period from August 2, 2002 to 5:00 p.m. September 25, 2002.

g) 15-Day Renotice Statement

CDSS did not renote these regulations because no changes requiring renote were made to the regulations following the public hearing.